

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 16-3217-cr

Caption [use short title]

Motion for: an Order pursuant to Anders v. California

Set forth below precise, complete statement of relief sought:

US v. RUBEL

relieving this office as counsel on appeal on the ground that the record in this

case presents no nonfrivolous legal issue.

MOVING PARTY: BRIAN RUBEL

☐ Plaintiff☒ Defendant☐ Appellant/Petitioner☐ Appellee/Respondent

OPPOSING PARTY: UNITED STATES OF AMERICA

MOVING ATTORNEY: PHILIP L. WEINSTEIN

OPPOSING ATTORNEY: BENJAMIN ALLEE, ESQ.

[name of attorney, with firm, address, phone number and e-mail]

Federal Defenders of New York, Inc., Appeals Bureau

Assistant United States Attorney, Southern District of New York

52 Duane Street, 10th Floor

One St. Andrew's Plaza

New York, New York 10007

New York, New York 10007

(212) 417-8742

(212) 637-2526

Court-Judge/Agency appealed from: SEIBEL, J., U.S.D.J./S.D.N.Y.

Please check appropriate boxes:

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND
INJUNCTIONS PENDING APPEAL:

Has movant notified opposing counsel (required by Local Rule 27.1):

☒ Yes☐ No (explain):

Has request for relief been made below?

☐ Yes☐ No

Has this relief been previously sought in this Court?

☐ Yes☐ No

Requested return date and explanation of emergency:

Opposing counsel's position on motion:

☒ Unopposed☐ Opposed☐ Don't Know

Does opposing counsel intend to file a response:

☒ Yes☐ No☐ Don't Know

Is oral argument on motion requested?

☐ Yes☒ No

(requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?

☐ Yes☒ No

If yes, enter date:

Signature of Moving Attorney:

Philip L. Weinstein

Date: 2/28/2017

Service by: ☒ CM/ECF☐ Other [Attach proof of service]

ORDER

IT IS HEREBY ORDERED THAT the motion is **GRANTED DENIED**.

FOR THE COURT:

CATHERINE O'HAGAN WOLFE, Clerk of Court

Date:

By:

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X

UNITED STATES OF AMERICA

:

- v -

:

D E C L A R A T I O N

BRIAN RUBEL,

:

Docket No. 16-3217-cr

Defendant-Appellant.

:

-----X

PHILIP L. WEINSTEIN declares under penalty of perjury,
pursuant to 28 U.S.C. § 1746, as follows:

1. I am an attorney associated with the Federal Defenders of New York, Inc., continued by this Court under the Criminal Justice Act as counsel to appellant Brian Rubel on this appeal. I make this declaration in support of a motion for an order pursuant to Anders v. California, 386 U.S. 738 (1967), relieving this office as counsel to appellant on the ground that the record in this case presents no non-frivolous legal issue to be resolved by this Court.

2. Mr. Rubel filed a timely notice of appeal from a judgment revoking his sentence of probation and sentencing him to 12 months in prison, to be followed by a life term of supervised release with a special condition, inter alia, that for the first five years of supervised release he shall not have

deliberate contact with any child under 18 years of age unless approved by the probation officer.

3. I have carefully examined the minutes of the sentence and other relevant documents and can find no non-frivolous issue that may be presented to this Court. Accordingly, I have prepared a brief pursuant to Anders v. California, 386 U.S. 738 (1967), submitted simultaneously with this motion, and request that Federal Defenders of New York, Inc., Appeals Bureau, be relieved as appellant's attorney on the ground that no non-frivolous legal issue is presented by this case.

3. I mailed appellant a letter advising him of his rights with respect to my motion to be relieved and telling appellant that any pro se papers he wishes to file must be received by the Clerk of the Second Circuit by March 14, 2017. In that letter I explained the basis for my conclusion that there were no non-frivolous issues that could be raised on appeal. I also told him that if he does not oppose the motion, it is likely that his conviction will be affirmed and the appeal dismissed. I have also informed him that he may submit pro se papers to the Court in opposition to our Anders brief and motion, and that he has several options if he chooses to do so. I informed him of the basis for my Anders motion. I have told him that these options include: (1) opposing our motion to be relieved, (2) requesting that the Court grant our motion to be relieved and assign other

counsel to represent him on appeal, and (3) submitting a pro se brief setting forth what he believes are the meritorious issues on appeal. I have mailed to appellant a copy of this motion, a copy of the Anders brief, and a form which is to be returned directly to the Clerk of this Court, indicating whether appellant intends to file any pro se papers for the Court's consideration.

WHEREFORE, it is respectfully requested that this Court enter an order relieving Federal Defenders of New York, Inc., Appeals Bureau, as counsel to appellant, pursuant to Anders v. California, on the ground that the record of the case presents no non-frivolous legal issue that may be presented to this Court.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: New York, New York
February 28, 2017

/s/

PHILIP L. WEINSTEIN

CERTIFICATE OF SERVICE

I certify that a copy of this Motion and Declaration has been served by CM/ECF electronic filing on the United States Attorney/S.D.N.Y.; Attention: **BENJAMIN ALLEE, ESQ.**, Assistant United States Attorney, One St. Andrew's Plaza, New York, New York 10007; and by first class mail on **BRIAN RUBEL** Reg. No. 85175-054, MCC, New York 150 Park Row, New York, New York 10007.

Dated: New York, New York
February 28, 2017

/s/
PHILIP L. WEINSTEIN